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Authorship and Ownership of Copyright: A Critical Review

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Abstract
Copyright is one of the rights of intellectual property. Copyright being a property right, raises important questions about ownership and the mechanisms for exploiting copyright. Authorship and ownership are, in relation to copyright, two distinct concepts, each of which attracts its own peculiar rights. The author having moral rights and the owners of the copyright possessing economic rights. Sometimes, the author of a work will also be the owner of the copyright in the work but this is not always so, and many works separate authors and owners as far as copyright is concerned. This paper examines the extent of rights conferred on the author and owner of a work by the Copyright Act, Cap C28, LFN 2004 and the limitations to the concept of authorship and ownership in a work made in the course of employment.

Introduction

The authorship and Ownership as distinct concepts under the copyright law are very important in exploiting the fruits in a work and laying claim to copyright protection. Ownership flows from authorship. The person who makes the work is normally the first owner of the copyright in the work, provided that he has not created the work in the course of employment, in which case his employer will be the first owner of copyright. The owner of the copyright in a work may decide to exploit the work by the use of one or more contractual methods. He may grant a licence to allow another person to carry out certain acts in relation to the work, such as making copies on which case he retains ownership of copyright. Alternatively, the owners may assign the copyright to another, that is transfer the ownership of the copyright to a new owner, relinquishing the economic rights under copyright law. Thus, this paper is aimed at defining the scope of persons who can lay claim to the benefits arising in a copyright work.

Authorship

The author of a work is the person who creates it[1]. The copyright in a work shall be vested initially in the author. The law stipulates that copyright in the work shall belong in the first instance to the author unless otherwise stipulated in writing under the contract of employment.[2] From the foregoing, the author is the creator or originator of a work, for instance, the author of a work of literature is the person who writes it; the author of a piece of music is its composer; the author of a photograph is the photographer while the author of a compilation is the person who gathers or organizes the material contained within it and selects, orders and arranges that materials.[3]

The author does not have to be the person who carries out the physical act of creating the work, such as by putting pencil to paper. An amanuensis taking down dictation is not the author of the resulting work. In *Cala Homes (South) Ltd V Alfred Mc Alphine Homes East Ltd*,[4] drawings were made by draughtsman, but another person had told them what features were to be incorporated in the designs for new houses. In some cases, that information was imparted by means of sketches, in other cases, verbally. The person giving the instructions also marked up the preliminary drawings with alterations he required to be incorporated in the finished drawings. Laddie J .said that what is protected is paper or some other medium, and that it was wrong to think that only the person who performs the mechanical acts of fixation is the author. He held that the person giving the instructions was a co-author of the drawings and hence, the plaintiff for whom he worked as design director, was a joint owner of the copyright.

With some types of work, further explanation of authorship is required and this is furnished by the copyright Act in section 51. The author in the case of a broadcast transmitted from within any country, means the person by whom the arrangements for the making or the transmission from within that country were undertaken. Also, in the case of broadcast relaying another broadcast by reception and immediate retransmission, the person

[1] Section 10 (1) Copyright Act, Cap. C28 LFN, 2004
[2] Section 10 (2) *Ibid.*
[3] *Water low publishers Ltd V Rose* (1995) FSR 207.
[4] (1995) FSR 818

making that other broadcast is the author. While the author of a cable programme is the person providing the cable programme service in which it is included.

The author in the case of cinematograph film, means the person by whom the arrangements for the making of the film were made, unless the parties of the making of the film provide otherwise, by contract between themselves.[1]. The author in the case of literary, artistic or musical works means the creator of the work[2]. The author of a sound recording is the person by whom the arrangements for the making of the sound recording were made, except that in the case of a sound recording of a musical work, author will be the artist in whose name the recording was made, unless in either case the parties to the making of the sound recording provide otherwise by contract.[3]

The publisher of the typographical arrangement of a published edition is considered to be its author. If the work is a computer-generated literary, dramatic, musical or artistic work which is generated by computer in circumstance such that there is no human author, the author is deemed to be the person by whom the arrangement necessary for the creation of the work are undertaken.

Furthermore, because copyright protects only the expression of an idea, there may be occasions when the originator of the information that forms the basis of the work in question will not be considered to be the author of the work. For example, in *Springfield v Thame*,[4] the plaintiff, a journalist, supplied newspapers with information in the form of an article. The editor of the Daily Mail, from that information, composed a paragraph which appeared in the newspaper. It was held that the plaintiff was not the author of the paragraph as printed in the newspaper. Similarly, a person making a speech in public will be the author of a report of the speech made by reporters.. In *Walter V Lane* [5] reporters of the Times made reports of the speeches of Lord Roseberry which was printed verbatim after they had been corrected and revised. It was held that the reporters were the authors of the report and, as a result of the terms of the reporter's employment, the copyright in the reports belonged to the Times. Notwithstanding, it can be argued that the reporters had used skill and judgment in making correcting and revising the reports, thus, ought to be the authors of the reports.

However, as noted above, if a person is simply writing down dictation, the person dictating will be the author for copyright purposes, as the person doing the writing is simply the agent by which the work is made.

A work may be the result of the effort of more than one person. Several employees may work together to produce a written report, a team of computer programmers and system analysts together may produce a computer program, two or more persons may collaborate in the writing of a work of literature, a piece of music or the painting of a landscape in oils. This collaboration between two or more persons will result in a work of joint authorship only if their respective contributions to the finished work are not distinct from each other for instance, an abstract oil painting created by two painters applying paint to create an effect previously agreed by them would be a work of joint authorship. On the other hand, a book comprising separate chapters written by different authors is not a work of joint authorship.

Right to claim Authorship

Section 12 of the Act[6] provided for the right of the author to claim authorship of his work;

- To claim authorship of his work, in particular that his authorship be indicated in connection with any of the acts referred to in section 6 of this Act,[7] except when the work is included incidentally or accidentally when reporting current events by means of broadcasting.
- Also to object and seek relief in connection with any distortion, mutilation or other modification of any other derogatory action in relation to his work, where such action would be or is prejudicial to his honour or reputation.

These rights are perpetual, inalienable and imprescriptible.

Ownership

The Copyright Act [8] states the basic rule that the author of a work is the first owner of the copyright. This will apply in a good number of cases, for example to persons creating works for their own pleasure or amusement, independent person not employed under a contract of employment and even to employed persons if the work in question has not been created in the course of their employment. However, there are some exceptions to this basic rule, and where a literary, dramatic, musical or artistic work is made by an employee in the course of his employment, his employer is the first owner of the copyright subsisting in the work subject to any agreement to

[1] Section 51 Copyright Act, Cap. C28 LFN, 2004.
[2] Section 51 *Ibid*
[3] Section 51 *Ibid.*
[4] (1903) 19 TLRC 50
[5] (1900) Ac 539
[6] Copy right Act, Cap. C28, LFN, 2004
[7] The acts referred to in section 6 of this Act includes exclusive right to control and authorize the copyright in the works of musical, literary, artistic and cinematograph film
[8] Section 10 (1) of the copyright Act, Cap C28, LFN, 2004

the contrary.[1] In *Noah V Shuba* [2] it was held that the copyright in a work created by an employee in the course of his employment could still belong to the employee on the basis of a term implied on the ground of past practice. If the employee's name appears on the work or copies of the work, there is a presumption that the work was not made in the course of employment.

If a work is a work of joint authorship, unless they are employees acting in the course of employment, the joint authors will automatically become the joint first owners of the copyright in the work. They will own the copyright as tenants in common and not as joint tenants[3]. This means that effectively each owner's right accruing under the copyright are separate from the others, and he can assign his rights to another without requiring the permission of the other owners, and on his death his rights will pass, as part of his estate, to his personal representatives.

Where the whole or part of a copyright is assigned to two or more persons, they will hold as tenants in common, unless the agreement states otherwise. As copyright can be considered as a bundle of rights, an assignment might be partial. For example, the Owner A, of a copyright in a dramatic work might assign the right to perform the work in public to new joint owners B and C, and the right to publish paper copies of the work to D and E jointly. The original owner A, will remain the sole owner of the remainder of the copyright which will include *inter alia,* the right to translate the work.

However, simply granting one right to one person and another right to another person does not make them joint owners. Each will be the sole owner of that part of the copyright, for example, where there is an assignment of the paper publication right to P and an assignment of public performance right to Q. One co-owner of a copyright may not perform or authorize infringing acts to be done in relation to the work without permission of his co-owners.

It is worthy of note that a co-owner can exploit the rights in a copyright work without the permission of his co-owners, but can not licence, assign or mortgage his share without the consent of others.

Limitations to the Concept of Authorship and Ownership.

The limitation with the authorship and ownership provisions concern the employer/ employee relationship and the meaning of 'in the course of his employment'. There will be many situations where it will be obvious that the work has been made by an employee in the course of his employment, for example a sales manager who, during his normal working hours writes a report on the last quarter's sales figures for the board of directors of the company he works for. However, difficulties arise if an employee has created the work in his own time, whether or not using his employer's facilities, or if the nature of the work is not that which the employee is normally paid to create. To some extent the expectations of the employee and employer as manifested in the contract of employment are important. The case of *Joseph Ikhuoria V Campaign Services Ltd and Anor.*[4] buttresses the point. Here, the plaintiff claimed against the defendants, damages allegedly suffered by him when the defendants, infringed his copyright in a photographic material taken by the plaintiff between July and September 1983 by the wrongful printing, reproduction and display of the said photographic material by the defendant in the news papers.

The plaintiff was employed as a layout finish artist by the 1st defendants company. However, some time between July and August 1983, a brief was passed to the plaintiff by his boss instructing him to prepare a layout for advertisement for the 2nd defendants, an insurance company. The plaintiff's suggestion as to the apparels to be worn was accepted by his boss and the photographs in which he appeared were taken. The photographs according to the plaintiff were however meant to be part of a sketch. The plaintiff admitted knowing that the sketch which he prepared with his photographs therein would be used to advertise the 2nd defendant's company policy, if approved, and that it was the 2nd defendant that commissioned the job. The plaintiff contended that his photographs born out of the sketch, were inserted in some newspapers without his consent and that he was not paid anything. Even when he had resigned from the 1st defendant company, his photograph was still being used for advertisement.

It was, however contended on behalf of the defendants that by virtue of the provisions of the standard conditions of service which the plaintiff signed, he has no copyright that could have been infringed upon by the defendant as such right, if any, have been vested in the 1st defendant company. Clause 6 (4) of the standard conditions of service which plaintiff signed reads:

The copyright of all documents, design sketches, musical or the works created or prepared for the purpose of advertisement or in fact used for advertisement in any form whatever during the term of the employment, shall belong to the company and the employee shall acknowledge this in writing, by signing the

[1] Section 10 (2) *Ibid.*
[2] (1991) FSR 14
[3] *Mail Newspapers Plc V Express Newspapers Plc* (1987) FSR 90: on the death of one joint tenant, the other automatically takes the whole copyright.
[4] (1986) FHCR 308

duplicate copy of the revised standard conditions of service at the end as indicated.

The court dismissing the plaintiffs claim held that the plaintiff has relinquished his right of ownership of the copyright of the sketch to the 1st defendant company by express provision contained in his contract of employment.

On the other hand, if a person employed as a cleaner writes some music during his own time, he will be the first owner of the copyright in the musical, because going by his contract of employment, he is employed as a cleaner, and not as an author of musical works. Even if the cleaner writes the music during the time he should be performing his employment duties, he will still be the first owner of the copyright. Not- withstanding that he might have used the employer's facilities in writing the music, he still remains the owner of the copyright in that musical work.

Furthermore, if the employee is employed under a contract with a very wide job description, for example as a research and development engineer, and he prepares a work of copyright which is useful to his employer's business, the copyright will belong to his employer even if the employee created the work on his own initiative outside normal working hours.

A complicating factor may be that the employee's formal job description no longer completely and accurately describes his present duties, in which case the actual type of work carried out by the employee will be relevant. The basic test is whether the skill, effort and judgment expended by the employee in creating the work are part of the employee's normal duties whether express or implied or within any special duties assigned to him by the employer. If the answer is in the negative, then the employee will be the author and owner of the copyright, even if he has used his employer's facilities or assistance.

Employees sometimes perform work which is outside the contract of employment, that is, a contract of service. In such a case, the work is created under a contract for services rather than a contract of service, and the employee will be the first owner of the copyright. Thus, a university lecturer, will own the copyright in the notes he has prepared for the purpose of presenting lectures and will be able to exploit those notes, for example by publishing the lecture notes or by granting licence to a publisher.

Nonetheless, the Act[1] also provides that where a literary, artistic or musical work is made by the author in the course of his employment by the proprietor of newspaper, magazine or similar periodical, the proprietor shall in the absence of any agreement to the contrary, be the first owner of copyright in that work as it relates to the work in any newspaper, magazine or similar periodical. The proprietor shall in the absence of any agreement to the contrary, be the first owner of copyright in that work as it relates to the work in any newspaper, magazine or similar periodical or to the reproduction of the work for publication. But, in all other respects, the author shall be the first owner of the copyright in the work.

Similarly where the work has been commissioned by a person who is not author's employer under a contract of service or apprenticeship, the law[2] provides that the copyright in the work shall belong in the first instance to the author unless otherwise stipulated in writing under the contract. From the foregoing, ownership of copyright in a commissioned works belongs primarily to the author where there is no express agreement to the contrary.

Conclusion

Copyright works are proprietary in nature and as such they are protected for the exclusive exploitation of the author or the owner as the case may be. As stated earlier, the concept of authorship and ownership of copyright is distinct, and each attracts its own peculiar rights. There are instances where the author of a copyright is also the owner. In other instances, the author may be different from the owner. The first owner of a copyright in a work is the author, but the author may assign, transfer or licence his right to another. The author can be said to have moral rights while the owner economic rights. There is a limitation to the right of an author where the author is under a contract of service with an express agreement that reserved the ownership on the employer.

In this case, it is suggested that the author who is an employee in a contract of service should agree to the terms of contract that will reserve the ownership of his copyright in him and not on his employer.

Also, in the case where a person is commissioned to do a work by another, the ownership of the copyright in that commissioned work is the exclusive preserve of the person commissioned to do the work and not that of the commissioner of the work.

It is therefore suggested that the person commissioning the work should insist that the contract contains provisions for the assignment of the future copyright, so that he can claim ownership of the copyright in the commissioned work.

[1] Section 10 (3) of the Copyright Act, Cap C28 LFN, 2004.
[2] Section 10(2) (a) *Ibid*

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